IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 9794 OF 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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HARINARAYAN YADAV - Petitioner(s)
Versus
UNION OF INDIA & ORS. - Respondent(s)

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Appearance :
MR. R.K. MISHRA for Petitioner(s).
MR. BIPIN I. MEHTA for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 29/03/2006

ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. The petitioner, Harinarayan Yadav, being aggrieved by Order dated 19th August, 1998 passed in Original Application No.547 of 1994 by the Central Administrative Tribunal,

Ahmedabad Bench, rejecting his claim for reinstatement, is before this Court with a submission that as he had worked for more than 240 days between January-1989 to December-1989 and May-1991 to April-1992, the Tribunal was unjustified in rejecting his claim.

2. Mr.R.K.Mishra, learned Counsel for the petitioner, submitted that if in any 12 months, the petitioner had worked for 240 days or in any twelve calendar months, if the petitioner had worked for 240 days or more, his case would be covered under Section-25B, Sub.section-2(a)(ii), of the Industrial Disputes Act, 1947 (“the Act” for short).

3. In our considered opinion, the argument runs contrary to the very Sub.section-2 of Section-25B of the Act. Clause-(a) of Sub.section-2 says that a person would be deemed to be in continuous service under an employer for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than 240 days. In the present case, the petitioner came to be terminated somewhere in April-1993. If preceding twelve months with reference to the date of termination are to be seen, the last twelve months would commence from May-1992. From the petitioner's own showing, it would clearly appear that during the period of May-1992 to April-1903, he had worked for 212 days only. If that be so, the petitioner's services cannot be deemed to be continuous service. The Tribunal was absolutely

justified in rejecting the claim of the petitioner. The petition is accordingly dismissed. Rule is discharged. No costs.

[R.S.Garg, J.]

[Sharad D. Dave, J.]

*kamlesh**